

old injury sustained while jumping on a trampoline in 1999 and while participating in sporting activities between March 2000 and June 2003, and was actually recommended for back surgery by Ali B. Manguoglu, M.D., in 1999.

The Board is aware claimant has a several-year history of back problems. The Board is also aware that it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.¹

In this instance, the controversy also extends to the medical reports. Claimant was referred to board certified neurosurgeon Paul S. Stein, M.D., by the ALJ for an independent medical examination. Dr. Stein, after reviewing the multitude of records on claimant, came to what can only be described as a very ambiguous opinion. In his September 24, 2003 report to Judge Moore, Dr. Stein stated:

Absent a specific, documented injury, I cannot state, within a reasonable degree of medical probability, that recent work activity was the cause of Mr. Cook's current complaints. Neither can I say that this activity did not contribute to the current symptoms.

Claimant was referred to William O. Reed, Jr., M.D., board certified in orthopedic surgery, by Elaine Ferguson, D.O., claimant's primary care physician. Dr. Reed, while not having a complete history, did determine that claimant's back problems were, at least, aggravated by his employment with respondent. The Board acknowledges again that there are significant questions left unanswered in this record with regard to the cause of claimant's complaints and worsening condition. However, the Board finds, for preliminary hearing purposes, that the medical opinion of Dr. Reed is sufficient for preliminary hearing purposes to satisfy claimant's burden that claimant has, at the very least, suffered an aggravation of his preexisting condition² and the award of benefits by the ALJ, at least for preliminary hearing purposes, should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Bruce E. Moore dated June 1, 2004, should be, and is hereby, affirmed.

IT IS SO ORDERED.

¹ K.S.A. 44-501 and K.S.A. 2002 Supp. 44-508(g).

² *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

Dated this ____ day of October 2004.

BOARD MEMBER

c: John M. Ostrowski, Attorney for Claimant
Dustin J. Denning, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director